

(2013) 08 KAR CK 0250

In the Karnataka High Court

Case No : Writ Petition No. 32450 of 2010 (S-KAT)

State of Karnataka and Another

APPELLANT

Vs

G.S. Venkatesh Prasan and Others

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Karnataka Civil Services (General Recruitment) Rules, 1977 — Rule 4-A
Karnataka Civil Services Rules, 1958 — Rule 32

Citation : (2013) 08 KAR CK 0250

Hon'ble Judges : V. Suri Appa Rao, J;N. Kumar, J

Bench : Division Bench

Advocate : S. Susheela, for the Appellant; Sriyuths R.J.S. Praveen for G. Papi Reddy, Varadaraj R. Havaladar and Girish S. Jambagi, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This writ petition is preferred by the State challenging the order passed by the Tribunal, which has directed the State to grant promotion to respondent 1 to the post of Senior Assistant Director of Fisheries from the date on which respondents 2 to 7, who are his juniors are promoted vide the impugned notification dated 4-9-2001 and grant higher scale of pay and other financial benefits including pensionary benefits that may become due to him because of grant of such promotion. The 1st respondent in this writ petition was the applicant before the Tribunal. He was working as an Assistant Director of Fisheries, Grade I, Shimoga District. He was placed in charge of the post of Senior Assistant Director of Fisheries under Rule 32 of the Karnataka Civil Services Rules, 1958. He declined to accept the said in charge arrangement. Subsequently, on 12-4-1999 he was promoted to the post of Senior Assistant Director of Fisheries. He declined to accept the said promotion for domestic reasons and therefore, he was continued in the earlier post. However, on 11-1-2001 he made a representation requesting for promotion. In the said representation he also brought to the notice of the authorities that his wife is working in the Canara Bank, Shimoga Circle, Shimoga and that he is likely to

retire on 31-1-2001 and therefore, he pleaded that it would be helpful to him to work in his own place for a few months. The said request was not considered and he was not given the promotion. On the contrary by a notification dated 4-9-2001 his juniors were given promotion. He retired from service on 30-11-2001 on attaining the age of superannuation. Thereafter, he preferred an application before the Tribunal seeking a direction to the Authorities to give him promotion from the day his juniors were promoted and to grant monetary benefits.

2. The application was contested. The contention of the respondents was Rule 4-A of the Karnataka Civil Services (General Recruitment) Rules, 1977, which deals with "Foregoing Promotion" was introduced in the statute only on 22-5-2002 and therefore, the said provision has no application to the case of the applicant. Consequently, it was contended that when he made a request, it was conditional one. As the said condition was not accepted, his request was not considered on the ground that it amounts to refusal of promotion. The Tribunal overruled the said contentions and held as per the law, which stood prior to 22-5-2002, the applicant's request for promotion from the date when his juniors were promoted, could not have been denied to him. His request for accommodating him in Shimoga cannot be construed as a condition imposed by him as a condition precedent for accepting the promotion. Therefore, the authorities were not justified in treating the said request as refusal of promotion and therefore, the Tribunal set aside the endorsement issued declining to grant promotion. The facts are not in dispute. Though he declined to accept the promotion on 12-4-1999 for domestic reasons, probably, he could overcome all the problems. On 11-1-2001, he made a request for promotion. His juniors were promoted on 4-9-2001. Therefore, his case for promotion ought to have been considered at that time and given promotion. It is true that Rule 4-A of the Rules has no application because it came into the statute book on 22-5-2002. In the absence of the said provision, there is no provision prohibiting the authorities from granting promotion mainly because on an earlier occasion, he has declined to accept promotion. In the request made for promotion, he only brought to their notice that he will be retiring within 10 months and that his wife is working in Shimoga and therefore, while granting promotion, this can be kept in mind, so that he can be accommodated so that the last period of his service can be spent with his wife. The authorities have misread the document and wrongly denied the promotion. The Tribunal's order is not arbitrary and unjustified. We do not see any justification to interfere with the well-considered order of the Karnataka Administrative Tribunal. There is no merit in this petition. Accordingly, petition is dismissed.